82-832

NO. 82-

Office - Supreme Court, U.S.
FILED
NOV 16 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

~~IN RE:~~ JOHN B. SHUPPER,
Petitioner

v.

Committee on Character and Fitness of the Supreme Court of South Carolina

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF SOUTH CAROLINA

Herbert E. Buhl, III
533-A Harden Street
Columbia, SC 29205

Laughlin McDonald
Neil Bradley*
Christopher Coates
52 Fairlie Street, NW
Atlanta, GA 30303
(404) 523-2721

Of Counsel:

Charles S. Sims
132 W. 43rd Street
New York, NY 10036

Armand Derfner
4400 Massachusetts Av. NW
Washington, DC 20016

Patrick J. Flynn
104 Forrestdale Drive
Taylors, SC 29687

*Counsel of Record

QUESTIONS PRESENTED FOR REVIEW

I. Whether the denial by the South Carolina Supreme Court and its Committee On Character and Fitness of petitioner's application to take the South Carolina bar examination without adequate notice, hearing and without any written reasons or basis, deprived him of due process and equal protection of laws as guaranteed by the fifth and fourteenth amendments.

II. Whether the decision below is in conflict with Willner v. Committee On Character and Fitness, 373 U.S. 96 (1963), which held that applicants for admission to the practice of law are entitled to procedural due process before a state can exclude them from the practice of law.

TABLE OF CONTENTS

	Page
Issues Presented for Review . . .	i
Table of Authorities	iii
Opinions Below	1
Jurisdiciton	1
Statute Involved	1
Statement of the Case	1
Reasons for Granting the Writ . .	9
Conclusion	17
Appendix	1a

TABLE OF AUTHORITIES

Cases:	Page(s)
Ex Parte Garland, 4 Wall 333 (1867)	9
Goldsmith vs. Board of Tax Appeals, 270 U.S. 117 (1926)	9, 11, 12
Greene vs. McElroy, 360 U.S. 474 (1959).	11
Koningsberg vs. State Bar, 353 U.S. 252 (1957).	10
Middlesex County Ethics Committee vs. Garden State Bar Association, ___ U.S. ___, 102 S.Ct. 2515 (1982).	16
Morgan v. United States, 304 U.S.1 (1938).	9, 13
Schware vs. Board of Bar Examiners, 353 U.S. 232 (1957)	10
State vs. Easterling, 257 S.C. 239, 185 S.E.2d 366 (1971)	14
State vs. Harvey, 268 S.E.2d 587 (S.C. 1980)	14
Willner vs. Committee on Character and Fitness, 373 U.S. 96 (1963) .	9, 11, 12, 13

		Page(s)
Constitutional Provisions:		
Fourteenth Amendment.		7, 10
Statutory Provisions:		
28 U.S.C. §1257(3).		1
Rule 5	Rules for the Examination and Admission of Persons to Practice Law in South Carolina	1, 5
Rule 6	Rules for the Examination and Admission of Persons to Practice Law in South Carolina	5, 6, 15
Rule 17	Rules of the Supreme Court of South Carolina	7

OPINIONS BELOW

The order of the South Carolina Supreme Court on petitioner's petition is appended hereto at 1a.

The order of the South Carolina Supreme Court on petitioner's petition for rehearing is appended hereto at 2a.

JURISDICTION

The final decision of the South Carolina Supreme Court sought to be reviewed was entered August 18, 1982. This Court has jurisdiction to review the decision below pursuant to 28 U.S.C. §1257(3).

STATUTE INVOLVED

Rule 5A(2), Rules for the Examination and Admission of Persons to Practice Law in South Carolina is appended hereto at 5a.

STATEMENT OF THE CASE

This matter involves the application of petitioner to stand for the South Carolina bar examination. Petitioner, a 1982 graduate of the University of

South Carolina School of Law, filed on April 1, 1982 a timely application to take the July, 1982 bar examination.[1] Pursuant to South Carolina Supreme Court Rules for the Examination and Admission of Persons to Practice Law in South Carolina all applicants must submit an application and apply for examination and

---

1. Petitioner submitted the standard ten (10) page application with twenty-three (23) attachments, including six (6) affidavits attesting to his good moral character and five (5) references. The petitioner also disclosed a nine (9) year old misdemeanor conviction for possession of drugs which had been set aside and expunged by court order. On October 16, 1973, petitioner was convicted of simple possession of hashish and LSD. The petitioner thereafter filed an application for post conviction relief. The State of South Carolina agreed that the verdict of the jury should be set aside and the South Carolina Supreme Court by order of September 24, 1975 so ordered. The Richland County Solicitor nolle prossed the case on January 1, 1977. By order dated August 31, 1977, the Richland County Court of General Sessions ordered the expungement of all records concerning the case.

admission to the practice of law. Such applications are referred to a five member Committee On Character and Fitness (hereinafter Committee) for the purpose of determining the fitness, character and qualifications of applicants.

On May 19, 1982, the Clerk of the South Carolina Supreme Court requested additional information concerning the 1973 arrest and petitioner promptly filed a written response by May 31, 1982. Petitioner was advised by the Clerk on June 9, 1982 that it would be "necessary for you to appear for a personal interview to discuss further the matters involving your 1973 arrest. . ."

Petitioner was given no further information about the interview. He was not told what standards the Committee would follow, nor anything about its procedures. He was given no information

about the Committee rules, for it has none.

Petitioner appeared without counsel before the Committee for his personal interview on June 17, 1982. At the interview, petitioner was questioned about his nine (9) year old arrest and misdemeanor conviction for simple possession of drugs. Petitioner documented that the conviction had been set aside on appeal, that a new trial had been ordered, that thereafter the solicitor nolle prossed the indictment, and that an order had been issued by the court ordering the expungement of all records concerning the case. Petitioner disclosed that he had served eight and one half (8½) months of his sentence in jail, and upon demonstrating satisfactory rehabilitation had been granted parole.[2]

---

2. Petitioner successfully completed his parole in September, 1975 when his conviction was set aside by the state supreme court.

No other witnesses appeared and there is no indication that the Committee had before it then--or later--any information other than that provided by petitioner.

On July 14, 1982[3] petitioner was notified that the Committee had determined that he had "not established to the reasonable satisfaction of a majority of the Committee that you possess the qualifications for admission provided by Rule 5A(2)." 3a, 5a. Petitioner was provided no reasons for the denial of his application, only this citation to the good moral character rule.

Thereafter on July 22, 1982, petitioner filed a petition with the South

---

3. Rule 6A of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina provides that the Committee shall notify the clerk by July 1st for the July Examination whether or not the applicant possesses the necessary qualifications, and shall notify the applicant as soon as is practicable.

Carolina Supreme Court pursuant to Rule 6C seeking a review of the decision made by the Committee. Petitioner sought to have the Court set aside the decision of the Committee or at least be provided with reasons for the rejection of his application.[4] Neither the Committee nor anyone else filed any response to the petition for review.

By letter of August 2, 1982 the Clerk of the South Carolina Supreme Court notified petitioner that the Court had endorsed an order simply stating "Petition

---

4. The petition included eight (8) additional affidavits attesting to petitioner's good, moral character and fitness to practice law. In fact, one (1) affidavit was from the arresting officer involved, six (6) affidavits were from practicing attorneys and the final affidavit was from a former employer of petitioner, the director of the Alston Wilkes Society, a statewide prisoner rehabilitation organization, attesting to petitioner's successful and complete rehabilitation.

Denied" 1a.

Pursuant to Rule 17 of the Court's Rules, petitioner, on August 11, 1982, filed a timely petition for rehearing with the South Carolina Supreme Court requesting a reconsideration of the earlier decision. The petition for rehearing alleged that petitioner's right to due process and equal protection of the laws as guaranteed by the fourteenth amendment were violated by the Court and its Committee in numerous respects, including the failure to have adequate standards and procedures, the denial of his application with no reasons whatsoever, and the denial of any meaningful notice and opportunity for review. Petitioner also alleged that if his application had been denied solely on the basis of his 1973 conviction, the reliance thereon, especially in light of the passage of time and his exemplary

conduct in the intervening nine years, further denied him due process and equal protection.[5]

No response to the petition for rehearing was filed.

On August 18, 1982, petitioner was advised by the Clerk of the Supreme Court that the following order had been entered by the South Carolina Supreme Court: "Petition Denied" 2a. To date, no reason or basis has ever been provided to the petitioner for the rejection of his application.

---

5. The petition for rehearing also alleged that petitioner was subjected to disparate treatment from similarly situated persons, for misdemeanants, and particularly a person whose drug conviction was set aside because of an illegal search were admitted to the South Carolina bar.

REASONS FOR GRANTING THE WRIT

The writ of certiori should be granted because the decision below squarely conflicts with prior decisions of this Court. Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963); Goldsmith v. Board of Tax Appeals, 270 U.S. 117 (1926); Morgan v. United States, 304 U.S. 1 (1938).

A state cannot exclude a person from the practice of law without due process of law.[6]

This case does not present the issue of whether or not a convicted misdemeanant can be excluded from the bar but whether the court can do so without providing due process of law as guaranteed by the Constitution. The issue involves whether a state can, consistent with the Consti-

---

6. This Court has recognized as long ago as Ex Parte Garland, 4 Wall 333, 379 (1867) that the right is not "a matter of grace and favor."

tution, deprive a person of the right to practice law without any stated reason whatsoever.

A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process and equal protection clauses of the fourteenth amendment. Schware vs. Board of Bar Examiners, 353 U.S. 232, 238-239, (1957), Konigsberg vs. State Bar, 353 U.S. 252 (1957). As the Court stated in Schware,

> We need not enter into a discussion whether the practice of law is a 'right' or 'privilege.' Regardless of how the state's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the state's grace. Id. n.5.

The Court has consistently held that procedural due process requires notice,

hearing and opportunity to answer by the applicant. Goldsmith vs. Board of Tax Appeals, 270 U.S. 117 (1926). Procedural due process also requires confrontation and cross-examination. Greene vs. McElroy, 360 U.S. 474 (1959).

The decision below squarely contradicts this Court's decision in Willner vs. Committee on Character and Fitness, 373 U.S. 96 (1963). In Willner, the applicant had been certified by the State Board of Bar Examiners as having passed the bar examination in 1936 and the Committee in 1938 had determined that it was not satisfied and could not "certify that the applicant possesses the character and general fitness requisite for an attorney and counsel-at-law." 373 U.S. at 100. Even after several hearings and applications, Willner was still not provided reasons for the denial of his

application for certification. Willner alleged, inter alia, that he had been denied his constitutional rights in that in spite of his repeated attempts to ascertain the charges against him, he could not be sure of the Committee's reasons for refusing to certify him for admission. This Court citing Goldsmith determined that Willner had been denied procedural due process.

On all fours with Willner, petitioner here attended a hearing and was advised of the matter the Committee was considering. In Willner, this Court held:

> It does not appear from the record that either the Committee or the Appellate Division, at any stage in these proceedings, ever apprised petitioner of its reasons for failing to be convinced of his good character. Petitioner was clearly entitled to notice of and a hearing of the grounds for his rejection. . .
> 373 U.S. at 105.

The mere opportunity to provide evidence does not suffice, for this Court in Willner relied upon Morgan v. United States, 304 U.S. 1 (1938), a case in which two months of hearings resulted in a ten thousand page transcript, but not in due process.

> Those who are brought into contest with . . .Government in a quasijudicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command. Morgan v. United States, 304 U.S. 1, 18-19 (1938).

Petitioner had no opportunity to ascertain and contest the basis of the Committee's reports to the Appellate Division, and the Appellate Division gave him no separate hearing. Yet, "[t]he requirements of fairness are not exhausted in the taking or consideration of evidence, but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps. Id. at 20. Willner v. Committee on Character and Fitness, supra, at 105.

Petitioner may surmise that the decision was based upon his drug conviction, but this is not at all certain. Question 17 of the bar application requires the applicant to list all violations of the law "except instances which have been expunged by order of the court. ." And the South Carolina Supreme Court has ruled that simple possession of marijuana is not a crime of moral turpitude. State v. Harvey, 268 S.E. 2d 587 (S.C. 1980).

The Committee and State Supreme Court might have considered, inter alia, his arrest, his misdemeanor conviction,[7] that he did not take the stand in his

---

7. Subjecting him to disparate treatment, for if provided a hearing petitioner would show that others similarly situated have been admitted to the bar, including one whose marijuana/hashish possession conviction was reversed because of an illegal search. State v. Easterling, 257 S.C. 239, 185 S.E.2d 366 (S.C. 1971).

criminal trial,[8] that he spent time in jail, that he availed himself of state post-conviction remedies,[9] that they felt he was not rehabilitated, or that he did not file a previous provisional application because of the potential issue of his good character.[10]

---

8. The transcript of the hearing is not numbered. Page cites are informal. Petitioner was asked:

> Why did you not take the stand? I understand you have a right not to take the stand. (T. 14)

9. Questioned about the setting aside of the conviction because of an invalid search warrant, petitioner was asked:

> The Supreme Court considered that on the original appeal, didn't they? (T.7)
> I don't understand how it can be raised on post-conviction relief. (T. 8-9).
> You basically got it [sic] off on a technicality. (T. 12).

10. Rule 6B allows an applicant who "has an important problem in regard to his character" to file a provisional application after entering law school. Petitioner was questioned:

> "Yet you felt you didn't need to comply with Rule 6B?" (T. 26).

The denial of petitioner's application might have been based on valid or invalid reasons, but it is a denial of due process to fail to inform him of the reason so that he may have a fair opportunity to contest the action against him. Cf. Middlesex County Ethics Committee v. Garden State Bar Association, ____U.S.___, 102 S.Ct. 2515 (1982).

The writ should issue because under prior decisions of this Court, petitioner being three times informed only that his application was denied, the state's procedures entirely failed to provide him with due process.

CONCLUSION

This entire proceeding has been distinguished by a total lack of procedural fairness to petitioner. All attempts to ascertain reasons for the denial of his application have been met with rejection. The State Carolina Supreme Court has rejected the petitioner's application, failed to provide adequate notice or hearing and determined that absolutely no reasons or basis need be provided an applicant who has been denied the right to take the state bar examination.

If a person can be prevented from becoming a member of the bar based on this record, there is essentially no constitutional restraint on how and for what reasons states may restrict access to the right to practice law.

For the foregoing reasons, this Court should grant a writ of certiorari to review the judgment below.

Respectfully submitted,

Herbert E. Buhl, III
533-A Harden Street
Columbia, SC 29205

Laughlin McDonald
Neil Bradley*
Christopher Coates
52 Fairlie Street, NW
Atlanta, GA 30303
(404)523-2721

Armand Derfner
4400 Massachussetts Avenue, NW
Washington, DC 20016

Of Counsel:

Charles Sims
132 W. 43rd Street
New York, NY 10036

Patrick J. Flynn
104 Forrestdale Drive
Taylors, SC 29687

*Counsel of Record

The Supreme Court of South Carolina

August 2, 1982

A. Camden Lewis, Esquire
Messrs. Austin & Lewis
P.O. Box 11208
Columbia, SC 29211

Dear Mr. Lewis:

The Court reviewed the petition filed in behalf of John B. Shupper at its recent conference meeting and the following Order has been endorsed thereon:

"Petition denied.

s/J. Woodrow Lewis C.J.
For the Court

July 30, 1982."

Very truly yours,

FHS

CLERK

FHS/srb

cc: Mr. John B. Shupper
1637 Enoree Street
Columbia, SC 29205

The Supreme Court of South Carolina

August 18, 1982

Herbert E. Buhl, III, Esquire
533-A Harden Street
Columbia, SC 29205

Dear Mr. Buhl:

This is to advise that the Petition for Rehearing you filed in behalf of John B. Shupper was reviewed by the Court at the conference meeting August 17, 1982 and the following Order has been endorsed thereon:

"Petition denied.

s/J. Woodrow Lewis C.J.
For the Court

August 18, 1982."

Very truly yours,

Frances H. Smith
CLERK

FHS/srb

cc: Mr. John B. Shupper
1637 Enoree Street
Columbia, SC 29205

The Supreme Court of South Carolina

July 14, 1982

Mr. John Burton Shupper
1637 Enoree Street
Columbia, SC 29205

Dear Mr. Shupper:

The Committee on Character and Fitness has reviewed your application to take the July 1982 Bar Examination and has determined that you have not established to the reasonable satisfaction of a majority of the Committee that you possess the qualification for admission provided by Rule 5A(2). Accordingly, your application to take the examination has been denied.

I call your attention to the provisions of Rule 6C of the Rules for the Examination and Admission of Persons for the Examination and Admission of Persons to Practice Law in South Carolina which indicates you may petition the Supreme

Court for a review of this determination provided such petition is received within ten days after receipt of this notice.

Very truly yours,

Frances H. Smith
CLERK

FHS/srb

RULES FOR THE EXAMINATION AND
ADMISSION OF PERSONS OF
PRACTICE LAW IN
SOUTH CAROLINA

RULE 5

Rule 5A. Qualifications for Admission

No person shall be admitted to the practice of law in South Carolina unless he

. . .

(2) is a person of good moral character;

. . .

RULE 6

. . .

C. Any applicant dissatisfied with the recommendation of the Committee on Character and Fitness concerning his character may petition the Supreme Court for review. Such petition must be filed with the Clerk of the Supreme Court within ten (10) days after receipt of notice of the Committee's recommendation.

Supreme Court, U.S.
FILED
DEC 30 1982
ALEXANDER L. STEVAS
CLERK

NO. 82-832

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOHN B. SHUPPER,

Petitioner,

-vs-

COMMITTEE ON CHARACTER AND FITNESS OF THE SUPREME COURT OF SOUTH CAROLINA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

BRIEF OF RESPONDENT IN OPPOSITION

DANIEL R. McLEOD
Attorney General

C. TOLBERT GOOLSBY, JR.*
Deputy Attorney General

KENNETH P. WOODINGTON
Senior Assistant
Attorney General

HELEN T. ZEIGLER
Assistant Attorney General

Post Office Box 11549
Columbia, S. C. 29211
(803) 758-8667

ATTORNEYS FOR RESPONDENT

*Counsel of Record

QUESTIONS PRESENTED

I.

Whether the denial by the South Carolina Supreme Court and its Committee on Character and Fitness of petitioner's application to take the South Carolina bar examination after the petitioner was apprised of the matters concerning the Committee and was given an opportunity to discuss those matters with the Committee, deprived him of due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments.

II.

Whether under the facts presented in this case there has been a denial of procedural due process as defined by the Court in Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963).

TABLE OF CONTENTS

	Page
Questions Presented for Review. . .	i
Table of Authorities.	iii
Opinions Below.	1
Jurisdiction.	1
Statutes Involved	1
Statement of the Case	2
Argument.	7
Conclusion.	16
Appendix.	1a

TABLE OF AUTHORITIES

Page

CASES:

Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). 8

Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963). . . . . i, 8-15

STATUTORY PROVISIONS:

Rule 5 Rules for the Examination and Admission of Persons to Practice Law in South Carolina. . 1, 6

Rule 6 Rules for the Examination and Admission of Persons to Practice Law in South Carolina. . 2, 6, 7 .

OPINIONS BELOW

The decision of the Committee on Character and Fitness is set out in the Appendix of the Petition at 3a.

The Order of the South Carolina Supreme Court on petitioner's Petition is set out in the Appendix of the Petition at 1a.

The Order of the South Carolina Supreme Court on petitioner's Petition for rehearing is set out in the Appendix of the Petition at 2a.

JURISDICTION

The respondent does not question the Court's jurisdiction in this proceeding.

STATUTES INVOLVED

Rule 5A(2), Rules for the Examination and Admission of Persons to Practice Law in South Carolina, is set out in the Appendix of the Petition at 5a.

Rule 6, Rules for the Examination and Admission of Persons to Practice Law in South Carolina, is appended hereto at 1a.

STATEMENT OF THE CASE

On April 1, 1982, petitioner filed with the Clerk of the South Carolina Supreme Court an application to take the July bar examination. Pursuant to Rule 6A of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina, a copy of petitioner's application was delivered to the Committee on Character and Fitness for certification of, inter alia, the petitioner's character qualifications. [App. at 1a.] In responding to question 16 of the application[1/]

[1/] Question 16 of the Application asks for a list of all suits in equity, actions at law, suits in bankruptcy or other statutory proceedings, matters in probate, lunacy, guardianship and every other judicial proceeding of every nature or kind, fraud, formally or informally in any civil proceeding to which the applicant has been a party.

the petitioner disclosed that he had been arrested in 1973, incarcerated for 8 1/2 months, and that his conviction was subsequently set aside by Order of the South Carolina Supreme Court in September of 1975. [R., Application.] Attached to the application were orders and other documents regarding this response which revealed that the petitioner had been convicted and sentenced for simple possession of hashish and simple possession of LSD in 1973, and the conviction was appealed to the South Carolina Supreme Court where it was affirmed. The petitioner subsequently filed an application for post-conviction relief which was denied, and this decision was appealed to the South Carolina Supreme Court. The State joined in the petitioner's request that the verdict of the jury be set aside and a new trial granted. Accordingly, the South Carolina Supreme Court granted the application for

post-conviction relief and remanded the case for further proceedings. The attachments further revealed that since the petitioner had substantially complied with his original sentence, no further action was taken against him. His record was, thereafter, expunged. [R., Application.]

On May 19, 1982, a letter was sent from the Clerk of the South Carolina Supreme Court to the petitioner at the request of the Committee on Character and Fitness asking for further information concerning the petitioner's 1973 conviction and subsequent proceedings relating thereto. [R., Letter of May 19, 1982.] Petitioner responded by letter dated May 31, 1982, and provided the information sought. This letter revealed that the State joined in the petitioner's application for post-conviction relief due to a possible defect in the search warrant which was used to search petitioner's apartment. [R., Letter of

May 31, 1982.] Thereafter, by letter dated June 9, 1982, petitioner was notified that the Committee on Character and Fitness wished to personally interview him to discuss further the matters involving his 1973 arrest. A time and place was provided in the notice for this meeting. [R., Letter of June 9, 1982.]

The Committee on Character and Fitness met with the petitioner on June 17, 1982, and the proceedings were transcribed by a circuit court reporter. [R., Transcript.] The transcript of that meeting consists of forty-two pages of testimony concerning the single subject of the events and proceedings surrounding the petitioner's 1973 arrest.

By letter dated July 14, 1982, the petitioner was notified that his application to take the bar examination had been denied by the Committee on Character and Fitness on the basis that he did not establish to the satisfaction of the

Committee that he was a person of good moral character as required by Rule 5A(2). [App. to Petition at 3a.] This letter further provided notification of the right to petition the Supreme Court for a review of the Committee's determination. [R., Letter of July 14, 1982.]

A Petition for Review and supporting memorandum were filed with the South Carolina Supreme Court pursuant to Rule 6C of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina on July 23, 1982. The petitioner asked for a review of the finding of the Committee on Character and Fitness as set forth in the letter of July 14, 1982, referred to above. [R., Petition Under Rule 6C of the Rules for the Examination and Admission of Persons to Practice Law in South Carolina.] The supporting memorandum primarily addressed the substantive issue of the petitioner's

1973 conviction being used as a basis for denying him permission to take the bar examination. [R., Submission and Memorandum in Support of Petition Under Rule 6C of the Rules of Examination and Admission of Persons to Practice Law in South Carolina.] The petitioner was notified on August 2, 1982, that his Petition for Review was denied by the South Carolina Supreme Court. [App. to Petition at 1a.]

A Petition for Rehearing was thereafter filed by the petitioner with the South Carolina Supreme Court on August 11, 1982. [R., Petition for Rehearing.] By letter dated August 18, 1982, the petitioner was informed that the Petition for Rehearing was denied by the Court. [App. to Petition at 2a.]

ARGUMENT

A review of the record of the proceedings

below reveals that the decision of the South Carolina Supreme Court does not conflict with prior decisions of this Court. There is no dispute that previous decisions of this Court have held that procedural due process requirements must be met before a state can exclude a person from practicing law. Schware v. Board of Bar Examiners, 353 U.S. 232 (1957). The only issue, therefore, is whether the petitioner has been afforded procedural due process under the facts of this case.

Petitioner bases his argument that the requirements of procedural due process have not been met in this case on the court's decision in Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963). Although the Willner case was concerned with the same general issue as that involved here, there are important factual distinctions in this case that render it inappropriate for exact comparison. When these factual

distinctions are viewed in light of the Willner holding, it becomes apparent that the petitioner has been provided procedural due process.

The Willner case concerned an applicant for admission to the New York bar who had passed that state's bar examination but had failed to obtain a certificate of good character from the Committee on Character and Fitness. The petitioner in that case alleged that the Committee considered complaints and accusations made against him by persons whom he was not allowed to confront and cross-examine, and that he was not given the opportunity to refute the accusations of his accusers. The Court stated in recounting the facts of the case:

> Petitioner alleged that in connection with his hearings before the Committee on his 1973 application he was shown a letter containing various adverse statements about him from a New York attorney;

> that a member of the Committee promised him a personal confrontation with that attorney; but that the promise was never kept. Petitioner also alleged that he had been involved in litigation with another lawyer who had as his purpose 'to destroy me'; that the secretary of the Committee was taking orders from that lawyer and that two members of the Committee were 'in cahoots' with that lawyer.
>
> Id. at 101.

Since it appeared from the Record that the Committee considered several complaints against Willner from witnesses he was not allowed to confront and concerning matters he was not allowed to rebut, and relied on these complaints in reaching its decision, the Court concluded that he had been denied procedural due process. The Court stated:

> ... But because respondent has asserted that the ex parte statements involved in this case played no part in any of the decisions below, we have searched the record to assess this contention. It shows that the Committee had several complaints against petitioner. The various intra-Committee

> memoranda and reports to the Appellate Division contained in this record support the conclusion that the Committee did in fact rely on these complaints, at least to some extent, in reaching its determination.
>
> Id. at 105, 106.

In predicating its decision that Willner should have been allowed a hearing on the existence of these factors, the Court narrowed the direct applicability of its holding and emphasized the importance of factual distinctions in deciding questions of procedural due process.

As the Statement of the Case reveals, a very different factual scenario is presented in this case. Here, it is obvious from a review of the record that the petitioner was fully apprised of the matter concerning the Committee on Character and Fitness. The letter of May 19, 1982, which petitioner received from the Clerk of the South Carolina Supreme Court written on behalf of the

Committee contained questions relating only to petitioner's 1973 arrest and proceedings stemming therefrom. When petitioner was subsequently requested by letter dated June 9, 1982, to appear before the Committee, the stated purpose of the meeting was "to discuss further the matters involving your 1973 arrest." [R., Letter of June 9, 1982.] During this meeting, the Committee questioned the petitioner only about matters concerning the 1973 arrest and related proceedings. [R., Transcript.] An examination of the Record shows, furthermore, that the only evidence which the Committee had to consider was that supplied by the petitioner, and that the petitioner was given the opportunity to discuss and explain that evidence in his meeting with the Committee.

This differs widely from the situation which the Court confronted in Willner wherein matters with which that petitioner

was not confronted were relied upon by the Committee in making its determination. In this case, an examination of the entire record will reveal that throughout its proceedings regarding the petitioner, the Committee was concerned with only one subject. For the petitioner to now claim that he does not know the reason for the Committee's unfavorable decision is to ignore the entire record below.

In extending procedural due process to bar applicants, the Willner case requires only that an applicant be apprised of the reasons for a Committee's failure to be convinced of his good character and, depending upon the nature of the evidence against him, to be given some type of hearing thereon. These requirements are best stated in the concurring opinion as follows:

> The constitutional requirements in this context may be simply stated: in all cases in which admission to the bar is

to be denied on the basis of character, the applicant, at some stage of the proceedings prior to such denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence. As I understand the opinion of the Court, this does not mean that in every case confrontation and cross-examination are automatically required.

* * *

The circumstances will determine the necessary limits and incidents implicit in the concept of a 'fair' hearing. Thus, for example, when the derogatory matter appears from information supplied or confirmed by the applicant himself, or is of an undisputed documentary character disclosed to the applicant, and it is plain and uncontradicted that the committee's recommendation against admission is predicated thereon and reasonably supported thereby, then neither the committee's informal procedures, its ultimate recommendations, nor a court ruling sustaining the committee's conclusion may be properly challenged on due process grounds, provided the applicant has been informed of the factual basis of the conclusion and has been afforded an adequate opportunity to reply or explain.

Id., 107-108.

In Willner, the Court agreed that the petitioner had been apprised of the matters the Committee was considering. Since these matters included information not supplied by the petitioner, a hearing was required to give the petitioner an opportunity to rebut this information.

Here, the petitioner was also apprised of the matters which the Committee was considering. However, those matters concerned only information supplied by the petitioner, and the petitioner was given the opportunity to discuss the matters with the Committee. A review of the record reveals clearly the basis of the Committee's decision. There was nothing to be accomplished by any further hearing of the matter. We maintain that under the facts of this case, the procedure afforded the petitioner fully complies with the procedural due process requirements set forth in decisions of this Court.

CONCLUSION

For the foregoing reasons, we maintain that the decision below does not conflict with prior decisions of the Court, and that the Court should deny the Petition for writ of certiorari.

Respectfully submitted,

DANIEL R. McLEOD
Attorney General

C. TOLBERT GOOLSBY, JR.*
Deputy Attorney General

KENNETH P. WOODINGTON
Senior Assistant
Attorney General

HELEN T. ZEIGLER
Assistant Attorney General

Post Office Box 11549
Columbia, S. C. 29211
(803) 758-8667

ATTORNEYS FOR RESPONDENT

*Counsel of Record

RULES FOR THE EXAMINATION AND ADMISSION OF PERSONS TO PRACTICE LAW IN SOUTH CAROLINA

Rule 6

Application for admission

A. Any person desiring to take the bar examination for the first time shall file an application in triplicate, on a form prescribed by the Committee on Character and Fitness, with the Clerk of the Supreme Court. Such application shall be filed not sooner than February 1st nor later than April 1st for the July examination and not sooner than September 1st nor later than November 1st for the February examination. Each application shall be accompanied by a fee of sixty dollars ($60.00), provided in the case of an applicant who has been admitted to the practice of law in any other State, Territory or District of Columbia, for more

than one year, the application shall be accompanied by an additional fee to cover the Character Report to be obtained from the National Conference of Bar Examiners. Each applicant shall be required to give a full and direct answer, subscribed and sworn by him before some officer authorized to administer oaths, to each of the questions required by the Committee on Character and Fitness. The Clerk shall deliver one application to the Committee on Character and Fitness who shall, not later than July 1st for the July examination and February 1st for the February examination, certify to the Clerk of the Supreme Court whether or not the applicant possesses the qualifications as to age, character, residence and legal education prescribed by Rule 5. The Committee shall further, as soon as practicable, notify the applicant whether his application has been accepted or rejected.

B. In the event any applicant has an important problem in regard to his character which he deems might possibly ultimately disqualify him from membership in the Bar, he may request permission to have the matter resolved by filing a provisional application at any time after the applicant has been accepted as a student in an approved law school. The request shall be made on a form prescribed by the Committee on Character and Fitness, and shall be filed in triplicate with the Clerk of the Supreme Court. Each request must be accompanied by a non-refundable fee of fifty dollars ($50.00). Each applicant shall be required to give a full and direct answer, subscribed and sworn to by him before some officer authorized to administer oaths, to each of the questions required by the Committee on Character and Fitness. If the Committee is of the opinion that an early investigation of the applicant's character would be

proper, it may begin an immediate investigation. The Committee shall, as soon as practicable, notify the applicant of its determination. An applicant who has some question concerning qualification for admission to the Bar is encouraged to make early application upon admission to law school. No adverse inference concerning an applicant's character and fitness shall be drawn by reason of an applicant having filed a provisional application. The filing of a provisional application shall not relieve an applicant from fully qualifying in all respects under these rules, including the requirement of filing a final application to take the bar examination, to again pay the required fee and to obtain the final approval of the Committee on Character and Fitness as in other cases.

C. Any applicant dissatisfied with the recommendation of the Committee on Character and Fitness concerning his

character may petition the Supreme Court for review. Such petition must be filed with the Clerk of the Supreme Court within ten (10) days after receipt of notice of the Committee's recommendations.

D. Any applicant who has been refused favorable character recommendation by the Committee on Character and Fitness or whose petition filed pursuant to paragraph 6C has been denied, may petition the Supreme Court, showing sufficient rehabilitation to warrant a review of the Committee's finding or re-evaluation by the Court of its final action. Such petition may be filed not sooner than two (2) calendar years from the date of the Committee's adverse recommendation or the date the Court entered final action, whichever is later. This Rule shall not be construed to prohibit an applicant who was denied favorable recommendation solely because of residency requirements from re-applying in less than two (2) years.